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Office Supreme Court U. S.
FILED
MAR 14 1904
JAMES H. McKENNEY,
Clerk

3 Orig'l.
C. T. 1906

In the Supreme Court of the United States.

OCTOBER TERM, 1905

THE STATE OF KANSAS,
Complainant,
v.
THE STATE OF COLORADO ET AL.,
Defendants.

No. 8 Original.

Motion on Behalf of the Arkansas Valley Sugar Beet and Irrigated Land Company et al., to Dismiss.

The Clark QUICK-PRINTING Co. 1335 Lawrence

In the Supreme Court of the United States.

ORIGINAL PROCEEDING NO. 7.

THE STATE OF KANSAS,
Complainant,
v.
THE STATE OF COLORADO ET AL.,
Defendants.

MOTION.

Now come the defendants, The Arkansas Valley Sugar Beet and Irrigated Land Company, The Graham Ditch Company, The Colorado Fuel & Iron Company, The Fort Lyon Canal Company, The Rocky Ford Canal, Reservoir, Land, Loan and Trust Company, The Catlin Consolidated Canal Company, The Oxford Farmers Ditch Company and The Lake Canal Company, and jointly and severally move the Court to dismiss the bill and all proceedings herein as against said defendants, for want of jurisdiction, as apparent on the bill, the separate answers of said defendants and the replications filed thereto:

1st.—Because it appears by the bill and the several separate answers that the controversy is between the State of Kansas and citizens and

residents of Kansas, as the owners of lands along the Arkansas River in said state, claiming certain rights, as riparian proprietors, in the flow of said river, and said defendants, as appropriators of the waters of said river in Colorado, claiming the right to divert and use said waters for irrigation purposes adversely to the claims of each and all of said owners of lands in Kansas, and that all or a representative part of said owners of lands in Kansas are necessary parties to a determination of said controversy.

2nd.—Because it appears by the several answers filed herein that certain citizens and residents of the State of Kansas are the owners of lands in Colorado, under certain canals of said defendants and appropriators and users, through said canals, of the waters of said Arkansas River adversely to the claims of the owners of lands along said river in said State of Kansas, and that they are necessary parties to a determination of the controversy.

3rd.—Because, notwithstanding the State of Kansas and the several citizens and residents of said state owning lands along the Arkansas River in said state, or some of them, may have been originally entitled to the continued flow of the waters of said river, as claimed in the bill of complaint, it appears by the several answers filed herein that each and all of the said owners of lands have lost, waived, surrendered or abandoned all right to the flow of said river as against said defendants and by their conduct are estopped to

assert or maintain their said claim, and they are therefore necessary parties to a determination of the rights asserted by said defendants to the waters of said river.

4th.—Because, in the several separate answers filed herein, certain citizens and residents of the State of Kansas, owners of land along said river in said state, in whose behalf said bill was filed, are named as persons not entitled to the relief demanded in said bill, by reason of laches, estoppel, surrender or abandonment or by the operation of the statutes of limitation of the State of Kansas, and certain others are named as not entitled to the relief demanded because the title to their said lands was acquired from the Government of the United States, subject to the vested and accrued rights of said defendants to the use of the waters of said river in the State of Colorado for irrigation purposes; that all of said persons so named, together with all other persons in the like situation, are necessary parties to a determination of the rights of said defendants, as alleged in said several answers.

5th.—Because the complainant, instead of excepting to the sufficiency of the allegations of said separate answers, concerning the rights of said defendants against the citizens and residents of Kansas owning land along said Arkansas River in Kansas, and suggesting the necessity of their being made parties to this proceeding, and instead of in any way seeking a determination of the questions

thus presented in advance of further hearing, has filed its reply traversing the allegations made in said answers and has assumed the right to have said issues determined, but without making said citizens and residents of Kansas parties, to the end that the claims made by said defendants as against said persons may be established and said persons thereby concluded.

6th.—Because the issues tendered by the pleadings filed herein do not disclose a controversy justiciable in this Court within the meaning of the constitution and statutes of the United States which create and define the original jurisdiction of this Court.

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